

2012 IL App (2d) 111035-U  
No. 2-11-1035  
Order filed June 5, 2012

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Stephenson County.
	)	
Plaintiff-Appellee,	)	
	)	Nos. 11-DT-84
v.	)	11-TR-3062
	)	
MICHAEL A. MOWERY,	)	Honorable
	)	Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Burke concurred in the judgment.

**ORDER**

*Held:* The trial court properly denied defendant's petition to rescind the statutory summary suspension of his driver's license: although defendant alleged that the police lacked reasonable grounds for a traffic stop, defendant was not subjected to such a stop; instead he was seized only after he parked and went into and came out of a store, by which point the police had reasonable grounds to believe that he had driven under the influence of alcohol.

¶ 1 Defendant, Michael A. Mowery, was charged with driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2010)). He moved to quash his arrest and suppress evidence, and petitioned to rescind the statutory summary suspension of his driver's license. Following a hearing,

the trial court denied the motion and petition. Defendant appeals, contending that the police lacked reasonable grounds to stop the vehicle he was driving. We affirm.

¶ 2 On May 24, 2011, Officer Zach Amborn was on patrol in Freeport when he heard squealing tires just to the north. As he continued down the street, he saw two trucks taking off from the area “very quickly.” He turned around and followed them. As he did so, he observed that they did not stop completely at a red light. According to Amborn, he activated his overhead lights and initiated a traffic stop.

¶ 3 Both trucks pulled into the parking lot of a Super Pantry. The second truck parked in front of the doors while the first truck—which defendant was driving—parked farther away. Amborn parked his squad car behind the second truck and approached its driver.

¶ 4 Officer Ryan Vanderheyden arrived a few minutes later and, at Amborn’s request, approached defendant’s truck. A passenger, Troy Collalti, had just left the truck and was walking into the store. Collalti denied that they were “doing any donuts” or squealing tires, but said that defendant was the driver. While Vanderheyden was talking to Collalti, defendant got out of the truck and mumbled something. Vanderheyden could not make out what he said, but he smelled alcohol on his breath. Defendant went into the store and made some purchases. As he returned to the truck, Vanderheyden asked him if he was the driver. He responded that Collalti had been driving. Vanderheyden asked if he had been drinking and he responded that he had had “a few beers.”

¶ 5 Vanderheyden believed that defendant was too intoxicated to drive. He observed that his eyes were bloodshot and watery and that he had slurred speech. The odor of alcohol was strong enough that Vanderheyden believed that he “was over the legal limit.” Defendant refused sobriety testing and Vanderheyden placed him under arrest.

¶ 6 Defendant testified that on May 24, 2011, he was driving home from work. He was “[p]retty much 100 percent” certain that he stopped at the red light, because a car was coming from the opposite direction and he would have had to stop to avoid hitting it.

¶ 7 He did not see the squad car’s flashing lights until he had pulled into the Super Pantry. He did not believe that he was being pulled over. The officer did not instruct him to remain in his truck. Nevertheless, he sat there for a few minutes to complete a phone call, then went into the store to make his purchases. He first made contact with the officer as he was leaving the store. At that point, he did not feel that he was free to leave. Defendant testified that he had drunk approximately two beers over the course of three or four hours. His eyes were bloodshot because he had been doing welding, torching, and grinding work all day.

¶ 8 The trial court denied the motion to suppress and the petition to rescind. The court found that the trucks made rolling stops at the red light, which gave Amborn reasonable grounds for a traffic stop. Defendant filed a notice of appeal, purportedly from both orders.

¶ 9 Defendant argues that the trial court erred by denying his motion and petition. He contends that he testified unequivocally that he came to a complete stop at the red light, while the officers’ testimony was impeached by their police reports and by a police video, which does not clearly show a rolling stop.

¶ 10 Initially, as the State argues, and as defendant concedes in his reply brief, the denial of his motion to quash and suppress was not a final order that he could immediately appeal. *People v. Johnson*, 208 Ill. 2d 118, 138 (2003). However, an order denying a petition to rescind a summary suspension is a final order. *People v. Aronson*, 408 Ill. App. 3d 946, 951 (2011). Thus, we confine our analysis to the denial of the petition to rescind.

¶ 11 The State responds, first, that defendant was not actually subjected to a traffic stop before Vanderheyden approached him as he was leaving the store. Thus, whether he actually stopped at the red light is irrelevant. Alternatively, the State contends that Amborn had reasonable grounds for a traffic stop based on the failure to stop completely at the red light or to investigate the squealing tires. We agree with the State's first contention.

¶ 12 In a statutory summary suspension hearing, the defendant must establish a *prima facie* case for rescission by a preponderance of the evidence. *People v. Huisinga*, 242 Ill. App. 3d 418, 421 (1993). Whether the defendant has met this burden of proof is a question of fact for the trial judge, and this determination will not be overturned on review unless it is against the manifest weight of the evidence; that is, unless an opposite conclusion is clearly evident from the record. *People v. Granados*, 332 Ill. App. 3d 860, 862 (2002).

¶ 13 Defendant contends that the officer lacked reasonable grounds for a traffic stop. However, we agree with the State that defendant was not actually subject to such a stop. Although Amborn testified that he effected a stop of both trucks, he also testified that he parked behind the other truck and initially concerned himself with its driver while defendant parked several spaces away. Defendant testified without contradiction that Amborn did not order him to remain in the truck. In fact, he was able to walk into the store and make purchases. When the second officer, Vanderheyden, arrived, he first spoke to Collalti. Vanderheyden approached defendant only as he was leaving the store and returning to his truck. Thus, it is clear that the officers did not actually restrain defendant's movements until he left the Super Pantry. Accordingly, whether Amborn had reasonable grounds for a traffic stop is simply irrelevant.

¶ 14 For fourth amendment purposes, an individual is “seized” when an officer “ ‘ “by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” ’ ” *People v. Luedemann*, 222 Ill. 2d 530, 550 (2006) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991), quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). The test is whether a reasonable person in the defendant’s position would have believed he was free to decline the officer’s requests or otherwise terminate the encounter. *Id.* Here, defendant was free to decline the initial encounter and in fact actually did so by walking into the store. Thus, we need not decide whether the trial court properly found that defendant failed to stop at the red light.

¶ 15 This case is factually similar to *Luedemann*. There, the defendant was seated in a parked car. An officer parked his car in the middle of the street, approached the defendant’s car on foot, and shone a flashlight into it. *Id.* at 543. The supreme court held that no seizure occurred at that time. *Id.* at 543-44. No seizure occurred there until after the officer had developed reasonable grounds to believe that the defendant was in control of a motor vehicle while intoxicated. *Id.*

¶ 16 Here, too, no seizure occurred until Vanderheyden had reasonable grounds to believe that defendant had been driving while intoxicated. Indeed, defendant does not seriously dispute that, by the time of his (second) encounter with Vanderheyden while defendant was leaving the store, Vanderheyden had reasonable grounds to believe that he was intoxicated. See *People v. Wingren*, 167 Ill. App. 3d 313, 321 (1988).

¶ 17 Because defendant was not seized until after Vanderheyden had reasonable grounds to believe that he had been driving while intoxicated, the trial court properly denied the petition to rescind. Although the trial court did not articulate this precise rationale, we may affirm its order on any basis that the record supports. *Hope v. Hope*, 398 Ill. App. 3d 216, 220 (2010).

¶ 18 The judgment of the circuit court of Stephenson County is affirmed.

¶ 19 Affirmed.